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From: Brad Gross [mailto:Brad.Gross@sfgov.org]

Sent: Tuesday, March 01, 2005 2:42 PM

To: MLPAComments@resources.ca.gov

Cc: cahmpc@adelphia.net

Subject: MLPAComments: MLPA Comments from CA Harbor Masters & Port Captains

Please refer to the attached document for comments from the California Association of Harbor Masters and Port Captains regarding the Marine Life Protection Act Initiative Preliminary Draft Master Plan Framework.

Sincerely,

Brad Gross, CMM  
President, CAHM&PC

(See attached file: MLPACI Comments from CAHM&PC.doc)

**California Association of Harbormasters and Port Captains  
P O Box 2098, Seal Beach, California 90740 (714) 879-2443**

March 1, 2005

Phil Isenberg, Chair  
State MLPAL Blue Ribbon Task Force  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814  
Attn: Melissa Miller-Henson

**Re: Comments on the Marine Life Protection Act Initiative Preliminary Draft  
Master Plan Framework**

Dear Chairman Isenberg:

My comments represent those of the California Association of Harbormasters and Port Captains, a 57 year old, statewide professional organization representing some 45 primarily salt water ports, harbors and marinas. Our member agencies typically have as primary customers a wide mix of recreational and commercial fishing people, marine science institutions, environmental education businesses, and marine law enforcement personnel. Perhaps nowhere is the dialogue between those who would preserve and those who would use our State's ocean waters and its resources as spirited as in the context of our harbors.

I believe that our Association and its members have an important and unique perspective on the implementation of the MLPA. Our aim is to be helpful to the MLPAL process. Since we work with diverse communities, we are painfully aware of how emotional and divisive the subject of MPAs is, on all sides. We, therefore, offer the following constructive suggestions.

**Introduction Section**

In our opinion this section either needs to be complete, or be dropped altogether. We would suggest that the idea of trying to put the MLPA into the context of its historical development is a worthy goal; however, this section had little, if anything, to say about the controversies that have plagued this law since its introduction into the legislature. Briefly stated, this law had very little outreach to the harbors or fishing community as it was being developed. The vast majority of people who might be affected had no idea how this law would be interpreted. Those who did, have knowledge of the proposed law, and understood that it would be primarily an evaluation and re-orienting, even re-naming, of the State's existing system of MPAs, understanding that new goals and objectives in monitoring might now be needed. There was, and is still in our opinion, widespread support for this idea. It remains true, however, that the vast majority of people and agencies who might be affected had no idea that this law would be interpreted to mean a requirement for the development of a potentially vast new array of

areas closed to fishing and perhaps other extractive activities. Therefore, public buy-in from a large and primary set of stakeholders has not been there from the beginning.

Likewise, even though a number of past state money contributions are identified, we believe that it remains true that the state legislature has largely not chosen to fund this project.

Although there is discussion regarding the Marine Life Management Act, it omits discussion of the inherent conflict of one aspect of the MLMA with the Marine Life Protection Act: It was an objective of the MLMA to remove the state legislature from direct management of fisheries and to instead rely on the best available science, yet at the same time the Marine Life Protection Act did in part just that - it inserted the legislature into a series of findings, and directed the Fish and Game Commission to consider a set of actions that could have tremendous impact upon fishery management.

Also missing from the history of this bill is that it has once again been immersed in controversy amongst many stakeholder groups regarding the fact that this initiative is being funded largely by a special interest stakeholder organization. Although the creation of the Blue Ribbon Task Force (who appear to be making every effort to be fair minded) mitigates this conflict of interest to a great degree, the source of funding for this project remains a cloud over this process in the minds of some, and this should be recognized. The Task Force must continue to be very vigilant about having its decision-making be open and transparent, and in making sure that all voices are heard and their comments incorporated into this planning effort. Especially important, and this will be discussed further, is to assure that the science team represents a thorough science-based analysis.

The Introduction must either be complete and frank, or it should be dropped altogether.

### **The MLPA Must Be Placed Into Its Larger Context**

We believe that the Master Plan Framework needs to have a section to provide some guidance regarding the larger legal context and social dynamics in which this law finds itself. Specifically, we mean that the MLPA should not be interpreted as simply a set of protections for fish and ecosystems against human usage. Other laws, most notably the Federal Sustainable Fisheries Act, the California Coastal Act, the California Constitution with its “right to fish” clause, State Tidelands doctrine, and the regulations of the California National Marine Sanctuaries - all of these must put the MLPA into context. We must not forget that our oceans help feed our nation. There is even an international context to this, in as much that, if the implementation of this law leads to less fish production, then the nation will turn even more so to farm-raised and imported fish, with each having their own set of potential environmental problems.

### **Safety**

Even though it is not specifically spelled out in the MLPA, the Master Plan Framework should make “public safety” an item of high priority for consideration regarding the site of any individual MPA. This will relate directly to the proximity of MPAs to harbors and other launching facilities. Should fishing be restricted close to those facilities, it could

drive small boats farther away from shore or from the harbors, exposing them to increased weather/sea conditions and danger.

### **The Split Role of Science**

There has long been “an elephant in the room” issue regarding the role of science in the discussion of MPAs. It must be understood that many scientists (and certainly their institutions) are direct stakeholders and primary beneficiaries of work being conducted on MPAs and/or any new system of MPAs that may be put into place. They are beneficiaries economically, and in terms of the grant opportunities which will certainly occur centered around these MPAs. There will also be enhanced publication and career path opportunities. The science community has perhaps the greatest potential economic gain of any stakeholder group, should a large new network of MPAs be established, and especially so if they are sited close to their institutions. Scientists also have a stakeholder interest, as they should, in their natural curiosity, desiring to see experiments unfold, which can result in enhanced knowledge. This in turn focuses attention on the role of MPAs as a large-scale experiment. Certainly there are things that have been studied and are “known” regarding MPAs, but there is also a long list of unknowns.

The other role for science is, of course, to offer peer reviewed, objective opinions, and subject new theories to healthy skepticism.

These two roles can be in conflict. The Master Plan Framework should deal with this issue directly, by creating a stage to separate out the personal advocacy and institutional benefit side of the science voice, from its objective discussions. It is primarily the peer review process that makes this distinction and throws off advocacy or unfounded theory from scientific truth. The Master Plan Framework must lay out a method to ensuring robust peer review of the products of the Science Advisory Team, including a method of paying for such peer review, and have a method to insure that peer-reviewed comments are vetted and incorporated into the final SAT products. Included in this idea of science is socio-economics as is represented on the science advisory team. Socio-economic work products must be peer reviewed just as are the results of biological assessments.

It is of paramount importance that the science team products inspire widespread public confidence.

### **Social and Economic Science**

The Draft Master Plan Framework offers very little guidance as to how social and economic science products will be valued in the decision making. In making its decisions, the Fish & Game Commission will certainly need to know the implications of both a statewide network of marine reserves, and for individual MPA sites. This would be the economic and social effects of such a system. The Master Plan Framework needs to spell out when these products will be developed and how they will be applied to the decision making.

### **A Phased Experiment**

The Master Plan Framework should provide guidance to deal with the fact that much of what is being done with MPAs involves a very large scale and long-term scientific experiment. MPAs that are placed in west coast waters could well produce a list of benefits for some species of marine life. It may well be determined that for other species there is no benefit. It is possible that for some species there may be a detrimental benefit. This same concept goes for the idea of ecosystem-based management, which at this stage is more of an art than a science. Experiments with MPAs can provide valuable information regarding these questions and, in our opinion, should be supported as such. This being said, the experimental nature of these lends itself to a guidance which should occur in the Master Plan Framework regarding the phasing of MPA sites and any large network of MPAs. The MLPA Initiative process may well identify specific sites and even a network within the time constraints provided by the Resources Secretary. The Master Plan Framework should provide some guidance as to how these sites will be phased in. We suggest that the wise approach would be to be very patient and careful regarding the sequence of implementation of MPAs, so that the knowledge gained from each site as to benefits or problems is developed before the State goes charging off down a broader road. Indeed, at the last Blue Ribbon Task Force, a member of the public asked why the State didn't spend some time evaluating the results of the Channel Islands MPAs before it considered new MPAs. We do not advocate a position of not doing anything until five or ten years worth of assessments are in for Channel Islands, however, we do think the question contains a very powerful grain of truth regarding MPAs as an experiment, and in developing a go forward slowly approach.

### **Species of Marine Life to Benefit from MPAs**

Our comment here is simple. Only in the broadest stretch of imagination will all of the species listed in the Draft Master Plan Framework benefit from the creation of MPAs. Indeed, other peer-reviewed work, such as by Dr. Robert Shipp, has substantially narrowed the list of species that can benefit. This section should either be left out or produced subject to the best available science.

### **MPA Networks**

The draft language in this section is very troubling. It appears that the author has selected out one particular definition of “network” which he or she favors, to define what a network of MPAs will mean in the context of the MLPA. It also appears the author has linked this network theory to the theory of larval transport between MPAs, a theory we might add, which is not just unproven, but is probably not true. It appears that the purpose for this definition of network and larval transport theory is to lead those who will implement the Plan to a conclusion that many, perhaps larger, new MPAs are needed to fit the definition of network. Indeed, the most obvious commonality between MPAs that might be contained in a “network” lies in the very definition of MPA found in the law. No other purpose or connections should be claimed.

### **Existing and De-facto MPAs; Natural Refugia**

In discussing existing and de-facto MPAs, and Natural Refugia, the framework should speak to why there is support for the MLPA. A new look at the State's existing closures is required by the MLPA to see if they can be re-oriented, re-defined, and generally

made sense of, for the conservation and health of California's ocean resources. It is the most important task of this framework to spell out how the State's existing closed areas and, for that matter, closed areas in neighboring Federal waters that will affect California's resources, might be reconstituted to meet the goals of the MLPA. An early task of each region should be to create maps and a checklist of existing and de-facto MPAs, and natural refugia. Then the task will be to further refine goals and objectives for those areas that either can be put in place or augmented. Finally, enforcement, monitoring and funding must be identified. In this way, California will get the very most out of its existing closed areas while not creating further hardships on coastal communities. The Rockfish Conservation Area is a good example of this, wherein there is a core area which will be off limits to fishing far into the future. Yet, at this point and time, there is no baseline or other monitoring occurring. To add these goals and activities to the existing closed areas would not affect fishing, but would allow for everyone to reap the scientific value along with conservation benefits. Natural refugia should also be in this mix, even if there can not be assurances that they are never fished under any circumstance; they will still contribute to reaching the goals of the MLPA.

### **The Monterey Bay National Marine Sanctuary as an MPA**

California contains four National Marine Sanctuaries. Each Sanctuary has a different management plan and designation document. We will mostly speak to the Monterey Bay National Marine Sanctuary, as it comes right up to 270 miles of Central California coastline. It's extremely important that the Sanctuary be recognized as the MPA that it declares itself to be. The Monterey Sanctuary has no authority to regulate fishing, and for good reason. Importantly, its mandate is to conserve, protect, enhance habitats and resources through its widescale ban on oil and gas development, and through its water quality protection, education, and research programs. There are also specific regulations against altering the seabed, limiting dredge disposal sites, and limiting waste discharge generally. These goals are consistent with the goals of the MLPA. The Sanctuary does not meet the MLPA definition of an MPA because that definition states that it must contain a restriction on fishing. Nevertheless the fact that this Sanctuary is attaining conservation and biodiversity goals through other than fishing restrictions is extremely important to understand. The Master Plan Framework should include a thorough listing of the Sanctuary's beneficial activities as they relate to the goals and objectives of the MLPA, and integrate these goals. Again, even without a fishing restriction, we believe that significant conservation benefits are already in place for a major stretch of California's coastline.

### **The Land-Sea Connection**

The Master Plan Framework should clearly spell out that MPAs should not be placed in areas where there are known or highly likely impacts from land-based activities. This would generally be the case immediately next to highly urbanized areas or within the outflow areas of major tributaries. The Monterey Bay National Marine Sanctuary and County Health Departments can provide useful information about coastal pollution.

### **Local Jurisdiction Interface**

There is no guidance as to how local jurisdictional issues will be resolved. We suggest that the local community should have a great deal to say about decisions over the types of human uses which occur within or immediately next to its jurisdiction.

Should a State Marine Reserve be considered for an area within or immediately next to a local agency's jurisdiction, that local agency should also be consulted and its wishes should be given great weight. Any SMR contemplated would hopefully have defined and measurable ecosystem/habitat and biodiversity goals, and clear provable benefits. Other implications of SMR status for local government, such as the SMR also becoming a State listed Area of Special Biological Significance, should also be considered.

We hope that the MLPA process in the Master Plan Framework will give great deference to the wishes of local communities for any types of MPAs that are within, or next to, their jurisdictions. Generally, some guidance should be given about the wisdom of placing highly protected areas immediately next to highly urbanized areas.

### **Other Problems**

The Master Plan Framework also needs to have a section about how problems to the environment must be avoided through the use of MPAs. In particular, the work of Doctor Ray Hillborn should be drawn into this Master Plan Framework. Dr. Hillborn speaks very articulately about the phenomena that MPAs simply transfer fishing effort to other areas. There are many implications for this, included in them the irony that the creation of an MPA could well lead to the overfishing of neighboring areas. Where would the net gain for the environment be in this? Likewise, this section should discuss the fact that MPAs, even if established as science study areas or strictly conservation areas, and not intended to affect fishery management, will in fact, nevertheless, have great consequences on fisheries.

Other problems associated with MPAs will be non-human impacts upon them, such as pollution sources, and marine mammal predation, and even the cannibalism which occurs within species. Likewise, there may well be human impacts, even if they are non-extractive. For example, the widescale presence of non-extractive divers looking and photographing in a habitat may well be counter-productive to enhancing the biodiversity of an area or its resident fish population.

### **Monitoring and Enforcement**

Existing language in the Draft Master Plan Framework that seems to conclude that monitoring of ALL MPA sites is not required is very troubling. The fact that not all of California's existing MPAs have been monitored is exactly what brought on the passage of the MLPA. Furthermore, there is a widespread belief that for users of an area, whether they be fishermen or divers, to give up the use of that area without any realization of benefits to science or conservation that would come from monitoring would indeed be a bitter irony. The Framework should clearly spell out that no MPA will be put into place unless there is a monitoring plan in place which has had significant input from affected stakeholders as to its construction.

Within the concept of monitoring should be a multi-year required assessment as to whether the specific MPA goal and as to whether the network of MPAs are meeting their objectives.

The same is true of enforcement. There needs to be clear and realistic enforcement authority, which includes boundary designation, before any specific MPA is put into effect. The most important enforcement tool is education. Indeed, one of the most important declarations made in the Draft MPF is found on page 37: “Any new, modified, or existing MPAs will only be effective if their regulations are widely accepted and adhered to by the public.” We recommend that the Framework not propose enforcement through mandatory vessel monitoring systems, as this will surely alienate a key group of potential supporters.

## **Funding**

Master Plan Framework needs to be very clear that if there is no funding for monitoring, enforcement, and assessment, then the MPA will be taken out of service and returned to open usage.

Perhaps a version of the “Adopt-a-Highway” Program can be developed, with different groups sponsoring the monitoring and enforcement costs of the MPA – provided there is consistency in effort.

Sincerely,

Brad Gross, President  
California Association of Harbormasters and Port Captains